

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
	)	
Polaris Industries Inc.	)	CPSC Docket No. _____
	)	

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, Polaris Industries Inc. (“Polaris”) and the staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) settle the Staff’s allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2084 (“CPSA”).

3. Polaris is a corporation organized and existing under the laws of the state of Minnesota. Its principal offices are located at 2100 Highway 55, Medina, MN 55340. Polaris designs and manufactures all terrain vehicles (ATVs) and other vehicles.

STAFF ALLEGATIONS

Throttle Control

4. From December 1998 through July 2000, Polaris manufactured and/or sold a total of approximately 13,600 units of certain 1999 Scrambler 400, Sport 400, and Xplorer 400 ATVs, and of certain 2000 Scrambler 400 and Xplorer 400 ATV’s (“400cc ATVs”).

5. Each 400cc ATV is a “consumer product” that Polaris “distributed in commerce,” and Polaris is a “manufacturer” of a consumer product, as those terms are defined in sections 3(a)(1), (4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

6. The throttle on the 400cc ATVs could stick as a result of the throttle cable becoming caught on the throttle control cover, preventing the ATVs from slowing down or stopping when riders released the throttle lever. A stuck throttle can cause an ATV rider to lose control and crash, possibly resulting in severe injury or death.

7. From December 1998 to May 2000, Polaris received 88 reports of 400cc ATV throttles that stuck as a direct or apparent result of the cable becoming caught on the throttle control cover. In 19 of the 88 reports, the stuck throttle caused crashes, other accidents, or damage, and in 7 of the 88 reports, the stuck throttle caused injuries. The injuries included, among others, a dislocated hip, a broken shoulder, and torn back muscles.

8. From September 1999 to May 2000, Polaris obtained knowledge about the 400cc ATVs’ throttle defect, hazard, and risk, and Polaris made 3 engineering changes to address the defect. As of the end of September 1999, Polaris had received 47 of the 88 stuck throttle reports, it had received several reports from dealers who specifically noted the defect’s characteristics, and it had begun engineering changes to address the defect. As of January 2000, Polaris had received additional reports, made 2 engineering changes, decided on a further engineering change, and successfully tested revised parts.

9. By September 30, 1999, Polaris had obtained information that reasonably supported the conclusion that the 400cc ATVs contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. Sections

15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), required Polaris to immediately inform the Commission of such defect or risk.

10. Polaris did not report to the Commission regarding the 400cc ATVs until May 23, 2000, thereby failing to immediately inform the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

11. Polaris knowingly failed to immediately inform the Commission of the 400cc ATVs' defect or risk, as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d). Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, this failure subjected Polaris to civil penalties.

#### Oil Line

12. From January 1999 through August 2000, Polaris manufactured and/or sold a total of approximately 55,500 units of 2000 and 2001 Xpedition 325, Trail Boss 325, and Magnum 325 ATVs ("325cc ATVs").

13. Each 325cc ATV is a "consumer product" that Polaris "distributed in commerce," and Polaris is a "manufacturer" of a consumer product, as those terms are defined in sections 3(a)(1), (4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

14. The oil lines on the 325cc ATVs disconnected, blew off, loosened, or leaked, spraying or otherwise discharging hot pressurized oil. The discharging oil could cause the ATV and its surroundings to catch on fire, and the hot oil and fires could cause severe injury or death.

15. From March 1999 to February 2001, Polaris received at least 1,447 reports of 325cc ATV oil lines that disconnected, blew off, loosened, or leaked. In 61 of the 1,447 reports, the discharging hot oil caused smoke, fire, melting, or accidents, and in 42 of those 61 reports the

discharging hot oil caused the 325cc ATVs and/or their surroundings to catch on fire. In 18 of the 1,447 reports, the discharging hot oil caused injuries, including 2nd and 3rd degree burns and scarring.

16. From February 2000 to January 2001, Polaris acquired extensive knowledge about the 325cc ATVs' oil line defect, hazard, and risk. Polaris monitored claim reports, conducted engineering analyses, and made 4 engineering changes to address the defect.

17. From May 2000 to January 2001, Polaris sent at least 5 alerts to its dealers about the 325cc ATVs' oil line defect.

18. By February 2000, Polaris had obtained information that reasonably supported the conclusion that the 325cc ATVs contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. Sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), required Polaris to immediately inform the Commission of such defect or risk.

19. Polaris did not report to the Commission regarding the 325cc ATVs until after the Staff requested a report in December 2000. Polaris submitted a report in February 2001. As a result, Polaris failed to immediately inform the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

20. Polaris knowingly failed to immediately inform the Commission of the 325cc ATVs' defect or risk, as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d). Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, this failure subjected Polaris to civil penalties.

## POLARIS RESPONSE

21. Polaris vigorously contests and denies the Staff's allegations set forth above in this Agreement. Polaris enters into this Agreement to resolve the Staff's claims without the expense and distraction of litigation. By agreeing to this settlement, Polaris does not admit any of the allegations set forth above in this Agreement, or any fault, liability, or statutory or regulatory violation.

## AGREEMENT OF THE PARTIES

22. Under the CPSA, the Commission has jurisdiction over this matter and over Polaris.

23. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Polaris, or a determination by the Commission, that Polaris has violated the CPSA.

24. In settlement of the Staff's allegations, Polaris shall pay a civil penalty in the amount of nine hundred and fifty thousand dollars (\$950,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The payment shall be by check payable to the order of the United States Treasury.

25. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

26. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Polaris knowingly, voluntarily, and completely waives any rights it may have in this

matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Polaris failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

27. The Commission may publicize the terms of the Agreement and Order.

28. The Agreement and Order shall apply to, and be binding upon, Polaris and each of its successors and assigns.

29. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Polaris to appropriate legal action.

30. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced, and that is approved by the Commission.

31. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Polaris

(continued on next page)

determine that severing the provision materially affects the purpose of the Agreement and Order.

POLARIS INDUSTRIES INC.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Mary P. McConnell  
Vice President and General Counsel  
Polaris Industries Inc.  
2100 Highway 55  
Medina, MN 55340

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Counsel for Polaris Industries Inc.

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION STAFF

Nicholas V. Marchica  
Acting Assistant Executive Director  
Office of Compliance

Eric L. Stone, Director  
Legal Division  
Office of Compliance

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Seth B. Popkin, Trial Attorney  
Legal Division  
Office of Compliance

In the Matter of )  
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Finally accepted and final Order issued on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY ORDER OF THE COMMISSION:

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Todd A. Stevenson, Secretary  
Consumer Product Safety Commission